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BOOK REVIEWS.

ESSAYS IN TAXATION. By EDWIN R. A. SELIGMAN. Eighth Edition. New York: THE MACMILLAN COMPANY. 1913. pp. xi, 707.

It is becoming increasingly recognized that in deciding questions involving the constitutionality of tax laws judges are influenced by their views as to the incidence of the burdens imposed and their judgment as to the practical desirability of permitting those burdens to rest where the legislature has placed them. The constitutional clauses upon which the decisions are based are not sufficiently specific to afford a clear rule for guidance in determining whether any tax is levied for a public purpose or constitutes a burden on interstate commerce or on property not within the jurisdiction of the taxing authority. Many decisions professedly based on legal concepts are influenced more by considerations of economic effects. It is of great importance, therefore, that judges and lawyers should have the benefit of the judgments of those whose economic views are the product of wide observation and trained critical powers.

Professor Seligman's numerous works on public finance have amply demonstrated his superior fitness for this high task. The eighth edition of his *Essays on Taxation* contains so much new matter and such extensive revision of the treatment accorded to various topics in his earlier editions that it may well be regarded as a new work. It will be especially welcome for its history of tax-reform during the last two decades, its review of recent literature on the subject and its analysis of the reports of the many public commissions which have given consideration to the actual operation of the tax laws in force and to the changes necessary to eliminate the defects which have been found to exist. There are also valuable chapters on the general property tax, the single tax, the betterment tax, the inheritance tax, double taxation, the classification of public revenues and the problems arising from the fact that several taxing authorities may levy contributions within the same geographical area.

From the standpoint of the lawyer the most important parts of the book are the three chapters on the taxation of corporations. The contentions of corporations in the United States that various taxes levied by the states interfere with the freedom of interstate commerce or attempt to reach property outside of the jurisdiction of the state have occasioned much litigation and often with results unsatisfactory both from the point of view of consistent legal theory and from that of economic wisdom or expediency. Professor Seligman is acute in his analysis of these results and suggestive in his proposals for obtaining better ones. He has possibly overestimated the necessary effect of decisions declaring invalid certain state taxes on the ground that they impose unconstitutional burdens on patent rights (page 224) or on interstate commerce (page 267). It is true that these decisions have enabled certain property thus far to evade its due share of burdens. But many of these evils may be corrected by the imposition of taxes by the national government. It is also questionable whether the Supreme Court in determining whether taxes on receipts of interstate railroads were an unconstitutional burden on interstate commerce was ever as much influenced by the distinction between foreign and domestic corporations as Professor Seligman's brief statement (page 266,

notes 2 and 3) might lead one to infer. There is nothing in the opinions in *Leloup vs. Port of Mobile* and *Crutcher vs. Kentucky* to indicate that the court would have permitted the license tax on the business had those engaged therein been agents of domestic rather than of foreign corporations. And the basis of the decision in *Wiggins Ferry Company vs. East St. Louis* sustaining a state license tax on a ferry seems to be that the property employed had its situs within the state rather than that it was owned by a domestic corporation. But whatever weight may at one time have been accorded to this distinction, it is now definitely abandoned (See pages 268-270).

It seems ungracious to suggest omissions in a work so replete with information and discriminating comment, but one would welcome a fuller consideration of the application of the so-called unit rule to the valuation of interstate properties (page 150) and a discussion of the jurisdictionary questions which arise in connection with the taxation of inheritances (Chapter V). But such omissions as the reader may regret are amply atoned for by the wealth of bibliographical material appended to the discussion of all the topics covered.

Thomas Reed Powell.

PENAL PHILOSOPHY. By GABRIEL TARDE. Translated by RAPELJE HOWELL, with an editorial preface by EDWARD LINDSEY, and an introduction by ROBERT H. GAULT. (The Modern Criminal Science Series, published under the auspices of The American Institute of Criminal Law and Criminology.) Boston: LITTLE BROWN & Co. 1912. pp. xxxii, 581.

At the National Conference of Criminal Law and Criminology in 1909 the American Institute of Criminal Law and Criminology appointed a committee of five to select and procure the translation and publication of "important treatises on criminology in foreign languages", and Professor Tarde's work is the sixth in the series to be published. It would have been difficult to have made a better choice.

In the foreword the author states that the book deals with three different matters. First, the reconciling of moral responsibility with determinism; secondly, a general explanation of the criminal side of societies; and thirdly, reforms which the author believes to be necessary.

After pointing out the present crises both in morality and in criminal law, and discussing at length the various existing theories of responsibility which he finds unsatisfactory, the author develops his own theory based upon the continued mental and moral identity of the accused, and his similarity to the society in which the crime was committed. Of these two elements, however, the former, *i. e.*, the continued identity of the accused, is vastly more important.

In order then to have complete and absolute responsibility the "myself" who is tried must be the identical "myself" who committed the act and any diminution of this identity decreases the responsibility. Certainly there is neither mental nor moral identity between the "myself" who has killed a man in an epileptic fit and the "myself" existing between the recurring attacks of this malady. In social similarity the author finds the other factor necessary to complete responsibility. Obviously it would be unfair to hold a savage suddenly set down in the midst of us to the same degree of accountability as a life-long member of the community, nor would it be necessary to do so on account of the deterrent effect of punishment upon the members of the community.

Passing from the theory of responsibility to that of irresponsibility